

Drink Driving Defences

Clearly, if your alcohol reading level is below the statutory limit, no offence has been committed. However, in certain circumstances, even if the level recorded is above the maximum allowable, there may be potential defences. Whilst it is not a defence to say that you did not realise that you were above the limit, or did not intend to drive, the following defences would be acceptable, dependent upon the facts and circumstances at the time of the alleged offence.

Duress

If you can show that you were genuinely in fear of suffering serious physical injury and only drove to avoid that threat, there is a potential defence. It will for the Defendant to show the circumstances and critical issues are distance, whether the threat was real or perceived and whether a sober person of similar characteristics would have responded in the same way. The only justified reason to drive is to escape immediate danger so the Court will pay great attention to the distance driven.

Hip flask/drunk after the incident

One of the most common explanations is that the Defendant was below the limit at the time of any alleged offence but by the time the Police take a breath test, alcohol has been consumed which has resulted in a reading above the limit. Legally defined as "post offence consumption of alcohol or drugs" this defence inevitably relies upon back calculation and the burden of proof is on the Defendant to not only show that:

1. Alcohol was consumed after he had driven/being in charge but before a specimen was provided; and
2. That had alcohol not been consumed, his reading would have been below the limit or the level would not have impaired his ability to drive properly.

Spiked or laced drinks

In order to successfully defend a case on the basis that a drink was spiked the Defendant will need to show:

1. But for the drink being spiked, they would have been below the limit or their ability to drive would not have been impaired;
2. They had no knowledge that the drink was spiked or any reason to assume that they were above the limit.



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However, even if the above issues are established, it is still open to the Court to convict the Defendant, although these reasons can be used to justify "special reasons" as to why there should be no disqualification.

Technical defences/the Police did not follow the process correctly

The obligation is upon the Police to ensure that they have carried out the legal process correctly and if errors have been made, this could result in a conviction being unsafe meaning that the allegation should be dismissed.

Potential errors of process include:

1. The officer failing to supply the correct warning and advising the Defendant of his rights, obligations and implications;
2. The officer failing to follow the correct process when physically carrying out the breath test.
3. User error or the equipment being defective.
4. Miscellaneous procedural errors.

Any such discrepancies will not automatically render the allegation null and void. It depends greatly on the nature and severity of the failure and action taken to rectify it. Such potential problems require detailed investigation in order for a Defendant to be correctly advised.

Shortness of distance driven

It is unlikely that this will amount to a full defence given that the vehicle is driven on the road whilst the driver was above the limit, the offence is committed but it can amount to special reasons as to why there should be no disqualification. The critical issues are:

1. Distance driven;
2. The manner in which the vehicle was driven;
3. The state of the vehicle;
4. Whether the driver was intending to drive any further;
5. Traffic/road conditions at the time of the offence;
6. Risk caused to other road users/pedestrians;



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7. Why the vehicle was driven;
8. The level of alcohol.

Not on a public highway

If the "offence" occurred on private land, there is a potential defence if it can be established that that area is not a road or other public place. As a general definition, a public place is an area to which "the public have access or which members of the public are to be found without having obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied."

Typically, car parks, caravan sites, hotel forecourts, pub car parks are public places.

Emergency

As a general rule, the Court will convict drivers who are above the limit but who say the sole purpose of the journey was because of an emergency. Again, matters will depend on:

1. The nature of the emergency;
2. Alternative options;
3. Distance driven;
4. Whether it is a medical emergency etc.



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